

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA

Plaintiff,

vs.

LUIS ORTA ESPINOZA,

Defendant.

4:12CR3054

MEMORANDUM AND ORDER

Following a hearing held on June 26, 2012, the court detained the defendant pending trial. The court's detention order states the defendant is subject to a presumption of detention and has not rebutted that presumption.

Alternative Findings (A)

- X (1) There is probable cause to believe that the defendant has committed an offense
X for which a maximum prison term of ten years or more is prescribed in 21 USC 841 (a)(1) and (b)(1) .
☐ under 18 U.S.C. § 924(c).
- X (2) The defendant has not rebutted the presumption established by finding 1 that no condition will reasonably assure the defendant's appearance and the safety of the community.

And contrary to the defendant's motion, the order also provides the factual basis for the court's ruling, and its finding that the defendant poses a danger to the community and a risk of flight if released.

Part II— Statement of the Reasons for Detention

I find that the testimony and information submitted at the detention hearing establishes by ☒ clear and convincing evidence ☐ a preponderance of the evidence that

that the defendant poses a risk of danger to the community and a risk of flight if released. The defendant is not a US citizen, and is currently subject to an ICE detainer. He has a criminal history which includes making false statements to law enforcement, and at the time of his booking in this case, falsely stated that he was a U.S. citizen. Although he has family ties in this country (wife and child), and has lived in this country for over ten years, prior to this case being filed, he never applied for legal work status. Instead, his wife formed a company that defendant operated. That company is only a year old. The defendant has very little equity in his home here in the United States. He maintains regular contact with his four sisters who still live in Mexico.

Filing No. 21.

The defendant has moved to review his detention and requests a hearing. (Filing No. 26). Under 18 U.S.C. § 3142(f) the magistrate judge may only review detention if “information exists that was not known to the movant at the time of the hearing and that has a material bearing” on the amelioration of the risks of non appearance and safety. Therefore, motions for review of detention must specify the factual basis for the motion, the materiality of the facts to the issues, and that the information was not known previously. The defendant’s motion does not include this requisite information.

Accordingly,

IT IS ORDERED that the defendant’s motion to review detention, (filing no. 26), is denied without prejudice to re-filing, if appropriate, in accordance with the requirements described in this order.

July 13, 2012.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge